

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DERRICK CRUZ,

Petitioner,

v.

Civ. Action No. 1:19-CV-115
(Kleeh)

PAUL ADAMS¹,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 24], GRANTING
MOTION TO DISMISS [DKT. NO. 15], DENYING PETITIONER'S MOTIONS
[DKT. NOS. 2, 23] AND DISMISSING PETITION [DKT. NO. 1]

On May 28, 2019, the pro se Petitioner, Derrick Cruz ("Petitioner"), filed a Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241 [Dkt. No. 1]. Petitioner challenged a Bureau of Prisons ("BOP") disciplinary hearing for an incident involving the possession of contraband that resulted in Petitioner being sanctioned with the loss of Good Conduct Time ("GCT").

Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloï (the "Magistrate Judge") for initial review. The Government filed a Motion to Dismiss for Failure to State a Claim or, In the Alternative, a Motion for Summary Judgment [Dkt. No. 15]. On June

¹ Frederick Entzel is no longer the Warden of FCI Hazelton, having been replaced by Paul Adams. Pursuant to Fed. R. Civ. P. 25(d), Paul Adams is automatically substituted as a party in this matter, and the Clerk is directed to correct the docket.

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15, 2020, the Magistrate Judge entered a Report and Recommendation ("R&R"), recommending that the Court grant the Government's motion and dismiss with prejudice the Petition [Id. at 18]. The R&R further recommended that Petitioner's pending motions to proceed as a pauper [Dkt. No. 2] and for subpoena *duces tecum* [Dkt. No. 23] be denied.

The R&R also informed the parties that they had fourteen (14) days from the date of service of the R&R to file "specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection" [Dkt. No. 24 at 18]. It further warned them that the "[f]ailure to file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals" [Id. at 19]. Petitioner accepted service of the R&R on June 18, 2020 [Dkt. No. 25]. To date, no objections have been filed.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarciprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing

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Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. As set forth in the R&R, there was "some evidence" to support the results of the prison disciplinary proceeding challenged by Petitioner, and the standard of review for the BOP Disciplinary Hearing Officer's ("DHO") decision is satisfied [Dkt. No. 24 at 13]. The results of a prison disciplinary proceeding will be upheld so long as there is "some evidence" to support the decision. Superintendent v. Hill, 472 U.S. 455 (1985). Petitioner's additional claims, some raised for the first time in response to Respondent's motion to dismiss, are unsupported [Id. at 15-18].

Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [Dkt. No. 24] for the reasons stated more fully therein. The Government's Motion to Dismiss [Dkt. No. 15] is **GRANTED**. The Petitioner's motions to proceed as a pauper [Dkt. No. 2] and for a subpoena *duces tecum* [Dkt. No. 23] are **DENIED AS MOOT**. The Petition [Dkt. No. 1] is **DISMISSED WITH PREJUDICE**. This

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action is **STRICKEN** from the Court's active docket.

It is so **ORDERED**.

Pursuant to Fed. R. Civ. P. 58, the Court **DIRECTS** the Clerk of Court to enter a separate judgment order and to transmit copies of this Order to counsel of record and to the pro se Petitioner, via certified mail, return receipt requested, at the last known address as shown on the docket.

DATED: July 9, 2020

/s/ Thomas S. Kleeh
THOMAS S. KLEEH
UNITED STATES DISTRICT JUDGE